

D19696 (0346) MOV:pdo 4/09/96

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION

HUMBERTO MATA BRIONES AND  
WIFE, GUADALUPE MATA, INDIVIDUALLY AND AS NEXT FRIENDS  
OF HUMBERTO ALFREDO MATA,  
A MINOR

VS.

ALAMO ENTERPRISES  
BUILDING SUPPLIES, INC.;  
MOOR'S LUMBER & BUILDING  
SUPPLIES, D/B/A ALAMO ENTER-  
PRISES BUILDING SUPPLIES,  
INC.; AND KELLER INDUSTRIES,  
INC.

CIVIL ACTION NO. \_\_\_\_\_

**M - 96 - 053**

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**DEFENDANT ALAMO ENTERPRISES' PETITION FOR REMOVAL**

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TO THE HONORABLE JUDGE OF SAID COURT:

Comes now **ALAMO ENTERPRISES BUILDING SUPPLIES, INC., MOORE'S LUMBER & BUILDING SUPPLIES D/B/A ALAMO ENTERPRISES BUILDING SUPPLIES, INC.** and removes the above-entitled case to U.S. District Court, Southern District, McAllen Division, based on the following:

1. Defendant Alamo Enterprises is a Defendant in a products liability lawsuit filed in Hidalgo County, Texas styled, **Cause No. C-3316-93-E, Humberto Mata Briones and Wife, Guadalupe Mata, Individually and as Next Friends, of Humberto Alfredo Mata, A Minor vs. Alamo Enterprises Building Supplies, Inc.; Moore's Lumber Building Supplies, d/b/a Alamo Enterprises Building Supplies, Inc. and Keller Industries, Inc., in the 275th District Court, Hidalgo County, Texas.** This Defendant is a retailer of ladders manufactured by Co-Defendant Keller Industries.

2. On April 2, 1996 Defendant Keller Industries filed bankruptcy in Cause Number 96-484 in the U.S. Court Bankruptcy Court, District of Delaware under Title 11 of the United States Code. (See Exhibit A attached hereto and incorporated by reference herein.) Defendant Alamo Enterprises was apprised of this filing by Co-Defendant Keller's Plea in Bar filed on April 8, 1996 (See Exhibit B attached hereto and incorporated by reference herein.)

3. A federal question has now been injected into this lawsuit as Co-Defendant Alamo Enterprises, the retailer, has a pending cross-action against now bankrupt Co-Defendant Keller Industries, Inc., the manufacturer for contribution and indemnity as a "downstream" conduit of an allegedly defectively designed ladder. This contribution and indemnity is based on Texas common-law and contractual bases. Additionally, Plaintiff, through their expert witness have alleged failure to warn and labeling causes of actions against Defendants.

4. This petition is timely under 28 U.S.C. § 1446(b). True and correct copies of the following documents are attached hereto, pursuant to 28 U.S.C. §1446 (b) and Amended Local Rule 3J:

- (1) All executed process in the case;
- (2) Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings;
- (3) All orders signed by the state judge;
- (4) A copy of the docket sheet;
- (5) An index of matters being filed; and
- (6) A list of all counsel of record, including addresses, telephone numbers and parties represented.

5. 28 U.S.C. §1441(a) permits removal of civil cases pending in state courts where a district court of the United States has original jurisdiction.

6. 28 U.S.C. §1446(b) permits removal within 30 days of receipt of a pleading, motion, or order which indicates that the case is removable. Consequently, this removal action is timely filed.

7. 28 U.S.C. §1331 states that "district courts have original jurisdiction of all civil actions arising under the Constitution, law, or treaties of the United States."

8. 28 U.S.C. §1334(b) establishes original jurisdiction with the district courts in "all civil proceedings arising under Title 11, or arising in or related to cases under Title 11." This case is inextricably intertwined with the bankruptcy of Co-Defendant Keller Industries, Inc., the ladder manufacturer as Alamo, the retailer, has a common-law and contractual indemnity rights against the bankrupt party for the product liability allegations made against both the manufacturer and the retailer. As Co-Defendant Keller Industries, Inc. has a \$1 million self-insured retention, this Defendant's right to said indemnity is materially affected by the bankruptcy. Therefore, removal is appropriate.

9. Therefore, Defendant Alamo removes this case to this Court on the above-said bases.

Respectfully submitted,

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DUNHAM & BROWN, L.C.  
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BY: Miriam O. Victoria

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ATTORNEY FOR DEFENDANT  
ALAMO ENTERPRISES BUILDING  
SUPPLIES, INC., AND MOOR'S  
LUMBER & BUILDING SUPPLIES,  
D/B/A ALAMO ENTERPRISES  
BUILDING SUPPLIES, INC.

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded to the following counsel of record, was mailed certified mail, return receipt requested on this the 10th day of April, 1996.

Mr. William Hubbard  
**LAW OFFICES OF JOE GARCIA**  
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**ATTORNEYS FOR PLAINTIFFS**

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*Miriam O. Victoria*  
\_\_\_\_\_  
MIRIAM O. VICTORIAN

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